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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

SANTA PAULA ANIMAL RESCUE
CENTER (S.P.A.R.C.)

Petitioner,

v.

COUNTY OF LOS ANGELES,
DEPARTMENT OF ANIMAL CARE AND
CONTROL (DACC)

Respondent.

CASE NO. BS 144497

HON. LUIS A. LAVIN

**OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS OF
PATRICIA LEARNED, SHERI KOENIG,
CHRIS CIRAR, MISTY HIRSCHBEIN,
DVM, JENNIFER KWAN, DVM,
HAROLD W. HOLMES, ESQ.**

*[Filed concurrently with Request for Judicial
Notice]*

DATE: SEPTEMBER 5, 2013

TIME: 1:30 p.m.

PLACE: Department 82

ACTION FILED: 8/12/13

The County of Los Angeles ("County"), erroneously sued as the County of Los Angeles Department of Animal Care and Control, hereby opposes Petitioner's Motion for Preliminary Injunction. The County's opposition is based on the facts that the motion and the petition are procedurally and jurisdictionally defective and that Petitioner cannot state *a prima facie* case for any of the four requirements for a preliminary injunction.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A. Background

The Motion for Preliminary Injunction seeks to stay an administrative order dated July 29, 2013 finding that a Pit Bull/Rottweiler mix dog, "JoJo," (Dog) is a vicious dog, within the meaning of Los Angeles County Code § 10.37.030, and ordering him destroyed after the Dog attacked children causing severe injuries (**First Amended Petition, Ex. D**). The County used the Pit Bull/Rottweiler mix description of the Dog provided by its owner/keepers (**Learned Dec. 2:26-28, 3:1-26**). Petitioner, a rescue organization from Ventura County, describes the Dog as a German Shepherd mix. The Dog was relinquished by its licensed owner, Ms. Merrill, following the hearing on July 29, 2013, after the County presented evidence to the hearing officer of the unprovoked attacks by the dog on two children on two separate occasions (**Learned Dec. 2:11, RJN, Ex. A**). During the course of the hearing, another owner, Ms. Wheeler, stated three times on the record that she is not asking for the dog to be returned to them (**Learned Dec. 2:20-25, Transcript, 42:17-18, 43:1; 53:5¹**).

The owners never gave the County notice that they were seeking judicial review of the decision rendered at the July 29th hearing. The time to give notice under the statute expired on August 3, 2013. Petitioner, who is neither the owner or keeper of the dog, gave notice of an *ex parte* application to challenge the administrative decision after business hours on August 12, 2013, nine days after the expiration of the time to give notice.

B. Summary Of Argument

The Motion for Preliminary Injunction and the petition on which it is based, are procedurally and jurisdictionally deficient. These procedural and jurisdictional deficiencies provide ample grounds for denying the Petitioner's motion.

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¹ Petitioner filed a Notice of Lodging of the Administrative Record of the Administrative Hearing Transcript and Attachments of July 29, 2013, on August 21, 2013, referred to as the "Transcript" in this brief.

1 In addition to the procedural and jurisdictional deficiencies, the First Amended Petition
2 and the Motion for Preliminary Injunction are fatally flawed in that Petitioner is not able to
3 establish the four required grounds to make *a prima facie* case for a preliminary injunction, to wit:
4 that it is likely to succeed on the merits, that it is likely to suffer irreparable harm in the absence of
5 preliminary relief, that the balance of equities tips in its favor, and that an injunction is in the
6 public interest.

7 The County's opposition is supported by the facts and by well established law, compelling
8 the denial of Petitioner's motion.

9 II. ARGUMENT

10 A. PROCEDURAL AND JURISDICTIONAL DEFICIENCIES

11 1. Petitioner Has No Standing:

12 The only Petitioner named in the First Amended Petition is Santa Paula Animal Rescue
13 Center. Without seeking leave of court and without notice to the County, the Petitioner merely
14 typed in three additional names of individuals on the caption for its Motion for Preliminary
15 Injunction, and referred to these three individuals as "petitioners" throughout its pleading,
16 completely bypassing a longstanding and commonly known rule of civil procedure, requiring a
17 petitioner to seek leave of court to file a second amended petition to add new parties to an action.
18 "Any pleading may be amended once by the party of course, and without costs . . ." (Code of Civil
19 Procedure § 472)². Thereafter, amendments are only permitted after notice to the adverse party
20 and by leave of court (Code of Civil Procedure § 473). Accordingly, the individuals whose names
21 are typed on the caption of the motion are not petitioners, and as such, have no standing in this
22 action.

23 The licensed owner relinquished the Dog on July 29, 2013, and one of the other owners
24 stated emphatically several times during the hearing that she does not want the dog back. Under
25 Food and Agriculture Code § 31108 (b), a dog slated to be euthanized may be adopted by a rescue
26 organization. However, Food and Agriculture Code § 17006 provides that vicious or dangerous

27
28 ² The Code of Civil Procedure is also referred to as "CCP" in this brief.

1 dogs are not adoptable dogs under state policy. Since the Dog has been determined to be a vicious
2 dog within the meaning of Los Angeles County Code § 10.37.030, it is not an adoptable dog. The
3 Dog is a threat to public safety, therefore, it is not an adoptable dog. (**See also Holmes**
4 **Dec/Review, 12:8-10**). Moreover, according to its website, Petitioner is not even permitted to
5 receive dogs from outside of the city limits of Santa Paula.
6 (<http://www.santapaulaarc.org/faqs.html>). Therefore, according to its own website, Petitioner is
7 not permitted to accept the Dog.

8 It is an abuse of discretion to grant an injunction where petitioner lacks standing to sue.
9 *Costa Mesa City Employees' Ass'n v. City of Costa Mesa* (2012) 209 Cal. App. 4th 298, 310.

10 **2. The Motion Is Deemed to Have Been Filed Late**

11 The California Rules of Court provided that "Except in a summary judgment or summary
12 adjudication motion, no opening or responding memorandum may exceed fifteen pages."
13 (California Rules of Court, Rule 3.1113 (d)). Anyone seeking to file a longer brief must seek
14 leave of court to do so, which the Petitioner failed to do. Petitioner's Memorandum of Points and
15 Authorities is seventeen pages. Rule 3.1113 (g) provides that "A memorandum that exceeds the
16 page limits of these rules *must* be filed and considered in the same manner as a late filed paper."
17 (emphasis added). Accordingly, Petitioner's motion is deemed to have been filed late by operation
18 of law, and the court in its discretion may refuse to consider it in ruling on the motion.

19 **3. Petitioner Failed to Give Timely Notice of Judicial Review**

20 Los Angeles County Code § 10.37.121 (RJN, Ex. B³) provides that an owner desiring to
21 contest an administrative decision must notify the Los Angeles Department of Animal Care and
22 Control (County) "within five (5) days of the intention to seek judicial review of the decision."
23 None of the three owners, Travis Bosquez, Rebecca Merrill or Denise Wheeler gave the County
24 notice within the five day period, which expired on August 3, 2013.

25 ///

26 _____
27 ³ Exhibit B of the Request for Judicial Notice contains all of the provisions of Los Angeles
28 County Code, Title 10 (Animals), Chapter 37, (Potentially Dangerous and Vicious Dogs).

1 Fourteen days after the hearing, on August 12, 2013, after the close of business at
2 5:16 p.m., Petitioner, a non-owner or keeper, *e-mailed* the County notice of an *ex parte* application
3 to take place the next morning, August 13, 2013, in Department 82. Petitioner failed appear in
4 court on August 13, 2013, but re-noticed the *ex parte* application for August 14, 2013. The reason
5 why it is necessary to know whether the owner or keeper is going to challenge the decision,
6 especially in the case of a vicious dog finding, is to ensure that the dog is not euthanized if a
7 judicial review of the order is desired. Here, the notification was *never* made by the owners or
8 keepers and was made after the statutory time expired by Petitioner.

9 **B. NO GROUNDS FOR PRELIMINARY INJUNCTION**

10 The United State Supreme Court has held that "A plaintiff seeking a preliminary injunction
11 must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm
12 in the absence of preliminary relief, that the balance of equities tips in his favor, and that an
13 injunction is in the public interest." This four part or "traditional test" must be applied whenever
14 preliminary injunctive relief is sought. (*Winter v. Natural Resources Defense Council, Inc.*(2008)
15 555 US 7, 20). Petitioner cannot make a *prima facie* case for any of the four requirements.

16 **1. Petitioner is Not Likely To Succeed On The Merits**

17 A preliminary injunction must not issue unless it is "reasonably probable that the moving
18 party will prevail on the merits." [*San Francisco Newspaper Printing Co., Inc. v. Sup.Ct.* (Miller)
19 (1985) 170 Cal. App. 3d 438, 442. If a judge is convinced that the party is likely to lose in the
20 end, an injunction must not issue. CCP § 526(a)(1) requires that "it appears . . . that the plaintiff is
21 entitled to the relief demanded." CCP § 1094.5(b) provides that in reviewing an administrative
22 decision, the court may look to whether there was a fair hearing and wither there was a prejudicial
23 abuse of discretion. "Abuse of discretion is established if the respondent has not proceeded in the
24 manner required by law, the order or decision is not supported by the findings, or the findings are
25 not supported by the evidence." CCP § 1094.5(b).

26 **a. County proceeded as required by law.**

27 As the Notice of Hearing, Petition to Declare Dog Vicious, and the transcript of the
28 administrative hearing reflect, the dog owner was accorded due process in the conduct of the

1 hearing, and therefore, the administrative hearing collaterally estops Petitioner from re-litigating
2 the issue of whether the dog is vicious. An administrative decision has res judicata or collateral
3 estoppel effect if it results from a proceeding that was "judicial" [*Pacific Lumber Co. v. State*
4 *Water Resources Control Bd.* (2006) 37 Cal. 4th 921, 944] or "quasi-judicial in character [*Cal.*
5 *Pub. Emp. Retire. Sys. v. Super. Ct.* (2008) 160 Cal. App. 4th 174, 177]("CALPERS"). An
6 administrative decision is quasi-judicial if it offers an "adequate opportunity to litigate" and can
7 resolve "disputed issues of fact." [*People v. Sims* (1982) 32 Cal. 3d 468, 479 quoting *United*
8 *States v. Utah Constr. Co.* (1966) 384 U.S. 394, 422.] Indicia of a quasi-judicial proceeding
9 include a neutral decision maker, testimony under oath, a party's ability to subpoena, call, examine
10 and cross-examine witnesses, to introduce documentary evidence, to make oral and written
11 argument, a record of the proceeding and a written statement of the decision. [*Pacific Lumber Co.*
12 *v. State Water Resources Control Bd.* 37 Cal. 4th at 944, (citing *Sims*, 32 Cal. 3d at 480).

13 Harold W. Holmes, an attorney and Deputy Director of the County of San Diego Animal
14 Services Department, is a highly experienced hearing officer on dangerous dog cases who
15 reviewed the salient documents relating to this matter, and concluded that "there is no indication
16 that Respondents did not receive a fair hearing as Due Process demands." (**Holmes Dec./Review,**
17 **5:19-20**).

18 **b. Decision is supported by the findings.**

19 The decision to euthanize the Dog was based on the finding that the Dog is vicious within
20 the meaning of Los Angeles County Code § 10.37.030. Los Angeles County Code § 10.37.140 A
21 provides in pertinent part that:

22 "A dog determined to be a vicious dog may be destroyed by the department when it
23 is found, after proceedings conducted under Section 10.37.110 that the release of
the dog would create a significant threat to the public health, safety and welfare."

24 The applicable provision in the Food and Agriculture Code is almost identical:

25 "A dog determined to be a vicious dog may be destroyed by the animal control
26 department when it is found, after proceedings conducted under Article 2
27 (commencing with Section 31621, that the release of the dog would create a
significant threat to the public health, safety and welfare."

28 The hearing officer's decision to euthanize the dog was based on her finding that the dog is

1 vicious and is a threat to public safety (**Transcript. 56:1-22**). Both the County Code and the state
2 statute provide for the euthanization of a dog found to be vicious within the meaning of the
3 statutes.

4 **c. Findings are supported by the evidence.**

5 The weight of the evidence attached to the petition (**See Transcript attachments**), amply
6 supports the conclusion that the dog is vicious within the meaning of Los Angeles County Code
7 § 10.37.030, which provides that "*Vicious dog*" includes "*a dog which, when unprovoked, in an*
8 *aggressive manner, inflicts severe injury on or kills a person.* "

9 The finding that the dog is vicious is based on the evidence attached to the petition,
10 including three declarations under penalty of perjury stating the Dog attacked two children,
11 inflicting injuries, on two separate occasions (March 1, 2013 and May 16, 2013), and on the
12 testimony given and documents provided at the time of the administrative hearing. In addition to
13 the three Animal Control Officers who investigated and/or handled this matter, two witnesses
14 testified for the County at the administrative hearing, Connie Frederick and Breanna Frederick.

15 The injuries inflicted on Christian Gonzalez, the eight year old child in the second attack
16 that occurred on May 16, 2013, were severe injuries requiring two surgeries. In that attack,
17 Christian, a next door neighbor, was playing ball with his siblings in his own backyard. The ball
18 landed near the fence dividing the property between the dog owner and the victim's property.
19 When Christian attempted to retrieve the ball, the Dog bit his hand resulting in a significant loss of
20 tissue to his hand, requiring an initial surgery to repair the hand, and a second surgery to implant a
21 skin graft to close the laceration on the hand.

22 **(i) Admissions by Owner**

23 One of the owners admitted during the hearing that the Dog viciously attacked a child:

24 **HEARING OFFICER:** "... he [JoJo] went right on past the invisible fence thing
25 that you had put up and bit him severely on the hand."

26 **DENISE WHEELER:** "And I understand that. And like I said, I'm not asking for
27 my dog back." (**Transcript: 53:1-4**).

28 Ms. Wheeler made several specific references to her Dog biting the children:

1 **DENISE WHEELER:** "Uh the first kid that got bitten,"(Transcript: 12:19-20).

2 **DENISE WHEELER:** "... but she walked up five minutes before the second kid
3 was bitten. . ." (Transcript:14: 18-19).

4 **(ii) Provocation is not a defense to these attacks:**

5 The contention that the two attacks were provoked by the boys who were bitten, is not
6 supported by the evidence. As the hearing officer pointed out several times during the course of
7 the hearing, the statements submitted as evidence of provocation submitted by the owners/keepers
8 of the Dog were not evidence of what occurred on the dates of the two attacks:

9 **HEARING OFFICER:** "...she's not talking about the date of the incident. She's
10 talking about in general that she's witnessed kids taunting the dog and throwing
11 rocks or sitting by the glass door and calling its name." (Transcript:16: 16-20).

12 Petitioner's citation to Los Angeles County Code § 10.37.170 (**Motion, 14:18-28**) supports
13 the County's position, since there are no allegations that any of the elements of that provision are
14 present in this case. Petitioner has not, and cannot argue from the evidence that

15 *"at the time the injury or damage was sustained [victim] was committing a willful*
16 *trespass or other tort upon premises occupied by the owner or custodian of the dog,*
or was teasing tormenting, abusing, or assaulting the dog, or was committing or
attempting to commit a crime."

17 Moreover, the testimony by victim Christian Gonzalez' mother and sister contradicts the
18 accounts of tormenting of the Dog by the boys (**Transcript, 37:11-23**). Mr. Holmes concluded
19 that "Respondents' argument of provocation, however, is ineffective," referencing the conflicting
20 testimony, the fact that no adult witnessed the bite, and the fact that the owners of the Dog
21 frequently left him outside unattended after being put on notice that JoJo was being "tormented"
22 (**Holmes Dec./Review, 7:3-26; 8:3-19**).

23 The owners demonstrated extremely poor judgment in choosing to keep a powerful,
24 aggressive dog in a mobile home park, in a small space and in close proximity with many families
25 with children, without strong fences to contain him, and by frequently leaving the Dog outside
26 unattended. Anyone who has raised children knows that they lack the judgment expected of
27 mature people, and can be mischievous. However, most dogs tolerate, or avoid, immature human
28 beings without viciously attacking them.

1 The poor judgment of the owners is echoed by the Petitioner: "They [the owners] want to
2 ensure the safety of their neighborhood, and realize that if JoJo is released back into their custody,
3 they would need to submit to any conditions imposed upon them." (**Motion, 17:20-21**). The
4 Petitioner's belief that it is entirely reasonable to return the Dog to the owners is repeated again:
5 "Petitioners offered many proposals and alternatives which were dismissed by Respondent such as
6 returning the dogs to the owner with the conditions imposed on owning the dog;" (**Motion, 20:13-**
7 **15**).

8 Clearly, neither the Petitioner nor the owners grasp the unpredictably dangerous nature of
9 the Dog or the danger to the public safety, if they would even *think* of releasing the Dog to the
10 owners, much less make the suggestion in writing. The owners were previously on notice of the
11 dangerous propensities of the Dog after the first attack, and failed to prevent the second, more
12 severe attack on Christian, resulting in two surgeries, and potentially permanent damage and
13 scarring to his hand.

14 Significantly, one of the Petitioner's own experts, Delores Burton, proves the
15 unpredictability of the Dog's behavior. She states in her report that she was not able to provoke
16 the Dog - that he "showed no signs of aggression" and that his reactions were "normal." The
17 behaviorist's report proves the County's points:

- 18 • that the Dog's behavior is unpredictable; the Dog was provoked to violence in
19 attacking the children, but was not provoked by the behaviorist.
- 20 • that the Dog is not provoked by sound, removal of food, "touching or being overly
21 threatening;" therefore, the alleged teasing did not provoke the Dog.

22 If their behaviorist is to be believed, that the Dog cannot be provoked, only one conclusion
23 remains: that the Dog is responding to some other need or stimulus, which is why the hearing
24 officer concluded it was vicious. Mr. Holmes gives short shrift to Ms. Burton's observations:

25 "These statements and evaluation are of limited value, given the demonstrated
26 history of aggression by this dog. Even Wheeler admits that the dog tries to break
27 through the fence. Further, Burton contradicts her evaluation that the dog is not
28 aggressive and exhibits no abnormal behaviors by stating that in her 2-hour session,
she 'went over dog behavior, body language, leadership exercises. We worked on
each of the issues they asked me and *we made good progress with him.*" (Emphasis
added). If JoJo has no aggression issues, what progress needed to be made?"

1 (Holmes Dec./Review 11:23-28).

2 d. **Presumption that County acted in accordance with law.**

3 Petitioner alleges that ". . . the hearing officer failed to properly consider the evidence of
4 provocation, and so the determination of JoJo as 'vicious' was an abuse of discretion." (**Motion,**
5 **16:24-25**). This allegation has no factual or legal support. The hearing officer gave careful
6 consideration to all testimony of the two owners who were present at the hearing, and accepted all
7 documents offered as evidence, including the owners' eleven page, single spaced "Dog Bite
8 Investigative Report and letter from behaviorist Delores Burton. Almost twenty pages of the
9 hearing transcript are devoted *exclusively* to the owner's testimony and the hearing officer's
10 questions relating to their testimony (**Transcript, Pages 12 through 31**). The hearing officer
11 accepted all evidence proffered by the dog owners, and read much of it into the record, asking
12 questions and making observations about the content (**i.e.: Transcript 14:1-4; 15:8-9; 16:16-24;**
13 **18:25; 19:1-25; 10:1-25**).

14 The law also provides a presumption that the hearing was properly conducted. Evidence
15 Code § 664 states that "It is presumed that official duty is regularly performed." This statute
16 creates a presumption that the County acted in accordance with law in seizing and in filing the
17 petition to declare the dog to be vicious.

18 For these reasons, it is unlikely that the Petitioner will prevail on the merits.

19 2. **Petitioner Will Not Suffer Irreparable Harm**

20 Petitioner alleges that "Petitioners have owned the dog for two years and have great love
21 and affection for him. . . Owner Petitioners and SPARC have invested a large amount of time and
22 money in an effort to help preserve JoJo's life so that he can obtain a fair hearing and live a good
23 life in an appropriate placement." (**Motion 19:2-6**). This statement misses the mark for three
24 significant reasons:

25 First, the owners are not petitioners, and have no standing in this case;

26 Second, the investment of time and money by Petitioner does not constitute irreparable
27 harm. "Normally, an injunction will not issue where only money is involved. The rationale is that
28 there is no threat of irreparable harm, because monetary losses are compensable in damages" (Cal.

1 Prac. Guide Civ. Pro. Before Trial Ch. 9(II)-A, § 9:524).

2 Third and sadly, there are many animals for Petitioner to rescue. Shelters are full to
3 capacity, and beyond capacity in some cases with animals for which they cannot find homes. The
4 euthanization of a vicious dog will not cause the Petitioner *any* harm, much less irreparable harm.

5 **3. Balance of Equities Not In Petitioner's Favor: No "Reasonable Alternatives"**

6 Petitioner alleges that there are *reasonable alternatives* to the hearing officer's decision,
7 including the following:

8 "returning the dog to the owners with the conditions imposed on owning the dog;
9 by having a nonprofit organization take responsibility for the dog for rehabilitation
10 and then either returning it to Petitioners with proper restrictions; adopt the dog out
11 after it has been rehabilitated; or and [sic] by having a nonprofit organization take
12 responsibility for the dog permanently as a sanctuary dog." (**Motion, 20:13-18**).

13 The term "reasonable alternatives" (return to owner with conditions, rehab then return to
14 owners; rehab then adopt to another family; release the dog to a rescue permanently), is an
15 oxymoron in this context, for many reasons:

16 First, the mere thought of ever returning the Dog to the owners is unreasonable on its face
17 for all of the reasons previously noted. It also completely ignores the administrative order
18 prohibiting the owners from "owning, possessing, controlling or having custody of any dog" for
19 three years. (**First Amended Petition, Ex. D**) This suggestion is contemplated in the first two
20 "reasonable alternatives."

21 Second, there is no credible evidence that the nature and unpredictability of this dog can be
22 changed by rehabilitation. Rene Ruston, one of the declarants, whose declaration does not state
23 that she has any training, experience or education relating to the rehabilitation of dangerous dogs,
24 and who had not met the Dog, blithely opined, as a board member and co-founder of Petitioner,
25 that "We are confident we can help JoJo." With all due respect to the good intentions of Ms.
26 Ruston, and her fellow board members, their organization simply does not have the professional
27 experience and background required to house and assess dangerous dogs on a long term basis.
28 The organization's website does not include a mission statement; instead it merely states that:

"The concept of a community based non-profit shelter was born over lunch in June, 2011.
The only condition sought by the initial committee members was that the new shelter would be

1 'no kill'...meaning it would NOT euthanize animals on the basis of overcrowding." (Emphasis
2 original).

3 Petitioner Santa Paula Animal Rescue Center is fortunate to have sufficient resources and
4 space to make the promise never to have to euthanize animals on the basis of overcrowding, but
5 the veracity of that promise may be tested if it fills its shelter with vicious dogs that are required to
6 be isolated from the public and from each other for safety reasons. Will they permanently house
7 vicious dogs to the exclusion of the friendliest of Golden Retriever or Havanese mixes? Are they
8 willing to assign all vicious dogs to a life of caged isolation with little human contact?

9 Importantly, as previously noted, *Petitioner is not even permitted to receive dogs from*
10 *outside of the city limits of Santa Paula.* (<http://www.santapaulaarc.org/faqs.html>). Therefore,
11 Petitioner is not permitted to accept the Dog. On their website, under FAQs, the following
12 question and answer is provided:

13 **FAQs**

14 "Q: Do you accept animals from other cities?

15 A: No, SPARC is here to help the animals of Santa Paula, CA."

16 Third, Ms. Burton, one of Petitioner's declarants, proves the County's contention that the
17 Dog is dangerously unpredictable and a threat to public safety, by declaring that she was unable to
18 provoke the Dog that viciously attacked two children. Petitioner admits that the dog committed
19 the attacks on the children, the second of which required two surgeries to repair, but cannot
20 identify what triggered such violent attacks.

21 Fourth, Dr. Polsky, another of Petitioner's expert declarants, lacks credibility when he
22 opined that the dog is not even a danger to society or the public. Dr. Polsky, who had not met the
23 Dog when he signed the declaration attached to the motion, voiced no opinion as to whether the
24 Dog can be "rehabbed", but instead boldly asserts: "**The dog JoJo does not pose a danger to**
25 **society or the public.**" (Polsky Dec. 4:28)

26 Ms. Learned casts doubt on some of Dr. Polsky's conclusions (**Learned Dec. 5:4-28; 6:1-**
27 **15**). Dr. Polsky himself, in case eerily similar to this one, involving a boy who was mauled by Pit
28 bulls, (*Faten v. County of Los Angeles* (2012) 209 Cal. App. 4th 543) expressed concern about
dangerous dogs that present a serious danger to public safety, in a declaration opposing the

1 County's Motion for Summary Judgment:

2 "By way of my contact with animal control officers throughout Southern
3 California, I have come to understand that **protecting the public from aggressive**
4 **and dangerous pit bull dogs, as well as other breeds, is an important part of**
5 **animal control regulation. . . these kinds of dogs present a serious danger to**
6 **public safety**, particularly when they are not properly cared for, not kept under
7 sufficient control, and allowed to roam, is well-known by animal control personnel.
8 The animal control agencies I have worked with understand the need to carefully
9 evaluate, investigate, and take necessary action against potentially dangerous pit
10 bull type dogs." (RJN, Ex. C, Dec. Richard H. Polsky, 2:24-27; 4:8-12;
11 **emphasis added**).

12 Dr. Polsky's credibility is in question, since his testimony appears to be based on the
13 interests of his client in a particular case. Accordingly, the subsequent evaluation performed by
14 Dr. Polsky on August 27, 2013, with a person that the Dog knows (Delores Burton) is biased on its
15 face.

16 Fifth, Halfway to Home, the rescue organization where the owners wanted to place JoJo,
17 was recommended by Petitioner's behaviorist, Delores Burton, and is an organization with which
18 she is affiliated. That organization has been shown to be unreliable, and unwilling to comply with
19 the County's requirements for such organizations. As such it was suspended as an adopter by the
20 County (Transcript 53, 54, Learned Dec. 4:9-15).

21 Sixth, another "reasonable alternative" offered by Petitioner is for the dog to be adopted
22 out. This suggestion is not only unreasonable, it is also illegal on its face, and completely
23 misrepresents the statutes relating to adoptability. Food and Agriculture Code § 17005(a) and
24 Penal Code § 599d. define adoptable animal to include: "**only** those animals eight weeks of age or
25 older that, at or subsequent to the time the animal is impounded or otherwise taken into
26 possession, **have manifested no sign of a behavioral or temperamental defect that could pose a**
27 **health or safety risk** or otherwise make the animal unsuitable for placement as a pet. . ."
28 (Emphasis added).

29 Petitioner conveniently failed to mention the statutory adoptability criteria in citing Penal
30 Code § 599d. The motion reads as follows:

31 "It [Penal Code § 599d] states in pertinent part that it 'is the policy of the state that
32 no treatable animal should be euthanized. A treatable animal shall include any
33 animal that is not adoptable but that could be adoptable with reasonable efforts.' . .

1 Even if it is determined the dog is not 'adoptable,' and therefore should not be
2 released to the Owners, the evidence shows that JoJo is at least treatable and should
3 be released to SPARC." (**Motion, 11:22-28**).

4 There are many misrepresentations of law and fact in this statement from the motion:

- 5 • The excerpt quoted from Penal Code § 599d by Petitioner was *not* the "pertinent
6 part of the statute" as it relates to this case. The pertinent part is "*no sign of a
7 behavioral or temperamental defect that could pose a health or safety risk;*"
- 8 • A treatable animal is one that is suffering from a physical defect which can be
9 corrected with medical treatment, not a behavioral trait;
- 10 • The Dog cannot be released to SPARC because it is not permitted to accept animals
11 from outside the City of Santa Paula according to its own website;
- 12 • The mere contemplation of the return of the dog to the owners is contrary to the
13 hearing officer's ban on dog ownership, is insensitive to the suffering of the
14 children who have been bitten, and is oblivious to public safety.

15 These and other misrepresentations of law and fact in the petition, the motion and
16 declarations, damage Petitioner's credibility, and support the County's position that Petitioner's
17 organization, which was created by well-intentioned folks over lunch in 2011, cannot accept the
18 Dog, and does not have the depth of knowledge or experience to follow the Dog for life to ensure
19 the public's safety. Therefore, its "reasonable alternative" to house the dog permanently in a
20 sanctuary, is simply not realistic. People with experience in placing vicious animals permanently
21 in sanctuaries, know that it is very difficult to persuade a bona fide sanctuary to accept a dog
22 determined to be vicious, who will commit to keeping the dog for his entire life, and keep him
23 isolated from the public. (**Learned Dec. 4:24-28;5:1-3; Holmes Dec./Review 12:19-24; 13:10-**
24 **21**). And as Mr. Holmes notes, permanent confinement in a kennel environment "is arguably
25 more cruel than euthanasia would be." (**Holmes Dec./Review, 12:22-24**). Petitioner means well,
26 but as noted throughout this brief, it has not explored the logical consequences of its requests.

27 For all of these reasons, the alternatives suggested by Petitioner are not "reasonable" or
28 credible. Therefore, the equities in this matter favor the County, which seeks to protect the public

1 from the vicious Dog. As well-intentioned as the Petitioner may be, their arguments and
2 declarations simply do not stand up to scrutiny.

3 **4. Injunction Is Not In Public Interest: Dog is Dangerously Unpredictable**

4 As noted by staff experienced in the handling of dangerous dogs, the Dog is unpredictably
5 dangerous and aggressive. Sheri Koenig, an experienced dangerous dog investigator and animal
6 control manager, stated that the Dog's behavior is highly unpredictable. Ms. Koenig concluded as
7 follows: "Based on my 23 years with this Department, and my many years of investigating
8 potentially dangerous and vicious dog cases, and cases of dogs causing a hazard to the community,
9 and my own personal observations of this dog, JoJo is extremely unpredictable and poses a
10 significant threat to public safety." (**Koenig Dec.¶8**). Veterinarian Misty Hirschbein, who has
11 treated and observed JoJo at the Lancaster shelter, confirmed that his behavior is unpredictable
12 (**Hirschbein Dec.¶16**). Jennifer Kwan, a veterinarian specializing in animal behavior, noted that
13 the Dog's aggression is "greatly concerning," and recommended that JoJo be euthanized. She
14 stated her concern that if the dog lives, the person who keeps him would need to be hyper-vigilant
15 in keeping people safe from him. She also expressed concern about the possible detrimental
16 effects of long-term kenneling on his aggressive tendencies. (**Kwan Dec./Report, pp 4-5**).
17 Finally, Chris Cirar, an Animal Control Officer who has observed JoJo during the past two months
18 of his impoundment, stated that "Based on my own personal observations of this dog, JoJo is
19 extremely unpredictable and poses a significant threat to public safety." (**Cirar Dec.¶13**).

20 Petitioner alleges that "Respondent and the public will be protected from any adverse
21 monetary consequences or danger resulting from the issuance of a preliminary injunction." This
22 statement misses the point. The County brought the Petition to Determine if the Dog is Vicious
23 and opposes their request for injunctive relief because of its responsibility to protect its citizenry
24 from attacks by dangerous dogs—not because of "adverse monetary consequences." To the
25 contrary, the monetary cost to the County is greater to perform its duties, than to sit by and do
26 nothing. The County of Los Angeles Department of Animal Care and Control has been tasked to
27 enforce the laws relating to dangerous dogs, which have been enacted by the state legislature and
28 by its local legislative body, the Los Angeles County Board of Supervisors. It would be derelict in

1 its duties to permit the release of a dog with documented vicious behavior, into any neighborhood,
2 or to a rescue, which cannot keep it permanently on their facility, isolated from the public and
3 from volunteers.

4 In its Legislative Declaration and Findings relating to dangerous dogs (Food and
5 Agriculture Code § 31601), the California state legislature found and declared the following:

6 (a) Potentially dangerous and vicious dogs have become a serious and widespread
7 threat to the safety and welfare of citizens of this state. In recent years, they have
8 assaulted without provocation and seriously injured numerous individuals,
9 particularly children, and have killed numerous dogs . . .

10 (b) The number and severity of these attacks are attributable to the failure of
11 owners to register, confine, and properly control vicious and potentially dangerous
12 dogs.

13 (c) The necessity for the regulation and control of vicious and potentially
14 dangerous dogs is a statewide problem . . . "

15 The public safety problems associated with dangerous dogs have increased in recent years
16 with more people choosing to own powerful, aggressive dogs. This is a major problem in and
17 around the Lancaster area. The County takes its responsibility seriously to protect the public, and
18 has revised its ordinance relating to dangerous dogs several times within the past thirteen years.
19 The citizens of the County depend on the Department of Animal Care and Control to enforce the
20 laws relating to dangerous and vicious dogs, and to remove vicious dogs from neighborhoods
21 when necessary, in the interests of public safety.

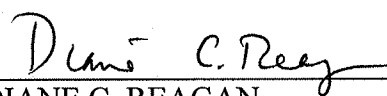
22 III. CONCLUSION

23 The motion for preliminary injunction is totally without merit and should be denied, and
24 the County awarded its fees and costs.

25 DATED: August 28, 2013

26 Respectfully submitted,
27 JOHN F. KRATTLI
28 County Counsel

By


DIANE C. REAGAN
Principal Deputy County Counsel

Attorneys for County of Los Angeles

DECLARATION OF PATRICIA LEARNED

DECLARATION OF PATRICIA LEARNED

I, Patricia Learned, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief as, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I have been employed by the Los Angeles County Department of Animal Care and Control since December 2007 as the Executive Assistant to the Director. As Executive Assistant, one of my duties is the Custodian of Records for the Department.

3. My duties also include assisting the Critical Case Processing Unit ("Unit") since its inception in early 2012, which investigates potentially dangerous and vicious dog cases. This unit has investigated over 350 potentially dangerous or vicious dog cases. I have personally investigated and helped prepare cases, and I work closely with Principal Deputy County Counsel Diane Reagan on cases that are presented to the court. I have also worked with her on two amendments to the Los Angeles County Code pertaining to potentially dangerous and vicious dog cases.

4. I have personally reviewed all of the documentation to which I refer in this declaration, including but not limited to the Petition for Hearing to Determine if Dog is Vicious, the transcripts from the Administrative Hearing held July 29, 2013, the Petitioners' Petition for Writ of Mandamus and Amended Petition, and the Petitioners' Motion for Preliminary Injunction and the attached declarations.

5. Regarding the dog, JoJo, animal ID A4549802, the Unit investigated the first case A13-015520, which occurred on March 4, 2013 and was reported as "child was riding his scooter in the street when dog came from property and bite child..." This was the unprovoked attack on the first child, Cole, resulting in less severe injuries. While in the process of investigating that case, whereby the Department would have sought a "potentially dangerous dog" designation under Los Angeles County Code Section 10.37.020, the Department received the report of the second incident, A13-036661. This incident which occurred on May 16, 2013, was an unprovoked attack on the child, Christian. Further investigation determined that the injury to the second child,

1 Christian, met the criteria for a "severe injury" as defined by Los Angeles County Code Section
2 10.37.040, since there was damage to his tendons (i.e. it was a "muscle tear"), and because the
3 injuries required two surgeries, involving multiple sutures, skin grafts and reconstructive surgery.
4 Therefore, because the injury to Christian was "severe" under County Code Section 10.37.040, a
5 petition was prepared for a hearing to determine if the dog is vicious under County Code Section
6 10.37.030. It was decided that requesting destruction was appropriate given the escalating
7 incidents involving the dog. I signed the verification of the petition for an administrative hearing
8 to determine if the dog is vicious.

9 6. Although I was not present at the hearing, I was made aware of the hearing
10 officer's decision to order the dog destroyed, after the hearing, by Officer Kim Schumann. Officer
11 Schumann advised me that Rebecca Merrill, the licensed owner of JoJo, had relinquished JoJo
12 after the hearing.

13 7. Officer Schumann further advised me that Travis Bosquez had not attended the
14 hearing and therefore, he had not relinquished ownership. I advised Officer Schumann that if only
15 Ms. Merrill had relinquished, I did not believe we could consider the dog relinquished until Mr.
16 Bosquez also relinquished the dog since he was listed as a Respondent on the petition, as well. I
17 assisted Officer Schumann in drafting an abandonment letter for Mr. Bosquez. I also advised
18 Officer Schumann to include the hearing officer's decision with the letter, as well as proof of
19 service for Mr. Bosquez.

20 8. Although Ms. Wheeler attended the hearing and has also since indicated some
21 ownership interest, I note that after reviewing the transcripts from the administrative hearing held
22 July 29, 2013, Ms. Wheeler clearly stated that, "I'm not asking for my dog back," (Transcript,
23 page 42, lines 17-18), "I'm not asking for [JoJo] back," (Transcript, page 43, line 1) and "I'm not
24 asking for my dog back," (Transcript, page 53, line 5). Clearly she relinquished ownership during
25 the hearing.

26 9. Department documents identify the dog, JoJo, as a "Pit bull/Rottweiler." The dog is
27 so identified on the licensing records kept by the Department. When licensing a dog, usually the
28 owner identifies the breed of the dog, as the dog is not present. Since the license was issued March

1 5, 2013, prior to the impound of the dog, there is no reason to believe that was not also the case
2 with JoJo—that Ms. Merrill identified JoJo as a “Pit bull/Rottweiler” when licensing him.
3 Additionally, most people identify mixes as just one breed, i.e. “Pit Bull Mix,” or “Rottweiler
4 mix.” Indeed, in the Motion for Preliminary Injunction the Petitioners refer to JoJo as a “shepherd
5 mix” (page 6, line 22). This specificity leads me to believe that the owners knew the parents of
6 JoJo if they specified not one, but two breeds in this manner. This is also supported by the owners’
7 statements that they acquired JoJo when he was only 5 weeks old, since most reputable breeders
8 do not sell puppies until they are 8 weeks old. In my experience, people sometimes attempt to
9 reclassify the breed of a dominant breed dog, such as a pit bull or Rottweiler, in order to avoid the
10 negative stigma that is associated with dominant breed dogs.

11 10. In addition, there are two documents attached to the petition are not Department
12 generated documents, and must have been provided by the owners, suggesting that the owners
13 identified the dog breed as a pit bull/Rottweiler mix to a private veterinarian, as well.

14 a. One document, attached as Exhibit A, is titled “Certificate of Neuter,”
15 issued by Akal Animal Hospital located at 44623 10th Street West, Lancaster, California, 93534.
16 This document is dated July 3, 2012 and reads, “...I have...(neutered) the dog Name JoJo Breed
17 Pit x Rot Age/DOB 8-15-11...The dog belongs to the owner: Name Bosquez, Travis...”
18 [emphasis added] “Rottie,” or “Rott” is a commonly used abbreviation in the animal industry in
19 reference to a Rottweiler.

20 b. The other document, attached as Exhibit B, is titled “Rabies Vaccination
21 Certificate.” It shows “Bosquez Travis” on the top, and indicates the species is a dog, the sex is an
22 altered male, the age is 12 months or older, the size is over 50 pounds, and the predominant breed
23 is “Pit x Rot,” and “Name: JoJo.” This document indicates a vaccination date of “4-1-13.”
24 Although the signature is unreadable, the address indicated under the signature is cut off but reads
25 “44623 10th, Lan CA 935.” This is substantially the same address as Akal Animal Hospital as
26 shown on the Certificate of Neuter.

27 11. The only criteria to become a 501(c)(3) animal rescue group (hereinafter simply
28 “rescue group”) are to give your organization a name and complete the appropriate paperwork

1 with the IRS. Many rescue groups are animal lovers who hope to help animals, but many do not
2 necessarily have extensive experience with animals with temperament defects. Most rescue groups
3 use foster homes, which are also animal lovers that are recruited from the general populous and
4 are allowed to take possession of animals with little to no training or experience, and often without
5 an appreciation for the unknown background of shelter animals. Many of the so-called "animal
6 hoarders" that have been investigated by the Department for animal cruelty and neglect have
7 claimed to be rescue groups, or were foster parents for rescue groups. Many times the rescues have
8 no idea that the animals were kept in the poor conditions with their foster parents until authorities
9 investigate.

10 12. Such is the case of Halfway to Home, the rescue group suggested by the owners
11 during the administrative hearing as the rescue to which JoJo should go. In March 2012, our
12 Department investigated a complaint of a woman keeping too many animals in deplorable
13 conditions. The woman claimed that she was "fostering" animals for Halfway to Home.
14 Thereafter, Halfway to Home was inactivated from the Department's adoption partner (rescue
15 group) program as they did not submit the required documentation to show that they fulfilled all
16 the criteria for the program.

17 13. We have also investigated potentially dangerous dog cases and bite incidents
18 involving animals in the care of rescue groups. In my experience, the majority of rescue groups
19 believe every single animal can be saved, regardless of health condition or temperament defects.
20 It is also my opinion that while most rescue groups are well-meaning, very few are prepared to
21 permanently keep an animal with a documented history of severe aggression, and most will
22 eventually deem such an animal as appropriate for adoption, which is a significant public safety
23 risk.

24 14. During my tenure with the Department, we have allowed the placement of some
25 dogs determined to be potentially dangerous dogs within the meaning of Los Angeles County
26 Code §10.37.020, and one dog determined to be a vicious dog within the meaning of 10.37.030.
27 All but one of these placements have failed. Rescue groups often place the dogs with people
28 without properly putting them on notice of the history and problems with the dog. We have found

1 groups sending dangerous dogs to jurisdictions where they are not allowed, or without notice to
2 local authorities. In one case, the rescue group attempted to adopt the dog just to return it to the
3 owner, deeming their own judgment of the situation more compelling than ours, with little to no
4 regard for public safety.

5 15. I have reviewed the Declaration of Dr. Richard Polsky and found the following
6 statements inconsistent with what we have learned in our experience and investigations:

7 a. On page 4, lines 6-7, Dr. Polsky stated that "there are no other reasonable
8 explanations for these dog bite attacks other than being provoked." It is my opinion that this is an
9 extremely irresponsible statement to make. While I would estimate that the majority of the cases
10 seem to have had some precursor to the attack, we have investigated many incidents where dogs
11 have bitten seemingly without provocation. In fact, the Department itself experienced one such
12 attack on Department property. A dog known as "Bobby" had been in the care of the Department
13 for a couple of weeks and had been vaccinated (i.e. poked with a needle) while conscious and
14 neutered by Department personnel (which also begins with an injection of a sedative) without one
15 single sign of aggression. Bobby was a favorite among the staff and volunteers, who referred to
16 him as a "wobble butt," because of his constant tail wagging and friendly demeanor. Bobby went
17 on to attack a facility visitor while in a large get-acquainted area in an unprovoked attack that
18 continued for a couple of minutes and caused incredibly severe injuries to the visitor, whereby he
19 ripped open her arm, bit her in the abdomen, and bit her in the groin.

20 b. On page 4, section (c), Dr. Polsky stated that it was "inconceivable" that
21 JoJo jumped over the fence into the child's property, and then jumped back over into his own
22 property. We have investigated cases where dogs have gotten out of a secured yards (with no
23 apparent means of escape) and scaled fences and walls. We have also investigated cases where
24 dogs have jumped over the fence and returned back over the fence after causing injury, sometimes
25 because an owner has called them back and sometimes without apparent reason.

26 c. On page 4, section (e), Dr. Polsky stated that "it is unlikely that a dog of the
27 size could clear the 4 foot fence." There is no doubt in my mind that this 60 pound dog could get
28 over a four foot chain link fence, or one even higher, with little to no effort, if he wanted to. Even

1 so, there was some suggestion during the administrative hearing that there was garbage can nearby
2 onto which JoJo may have jumped in order to get over the fence.

3 d. On page 4, section (f), Dr. Polsky states that "this dog should have inflicted
4 more than just a bite to the hand," and continues in section (h), with "the only conceivable
5 explanation [for the bite to the hand] is that this child positioned his hand in some manner so that
6 it was within reach of the dog." Where the child's hand was positioned is irrelevant to the finding
7 of "vicious." Dogs frequently go after vulnerable areas of peoples' bodies in attacks, such as the
8 face. This has been demonstrated in many attacks of which I have personal knowledge, such as
9 attacks to employees in the department, and other potentially dangerous and vicious dog cases.
10 Frequently, individuals have been bitten on the arms, because, when they see the attack coming,
11 they throw up their arms in defense of their face. The child, Christian, whose hand was bitten,
12 stated in his declaration that, "while I was cleaning dirt out of my eyes...JoJo knocked me down
13 and bit me on my left hand." It is certainly possible that the dog was actually going after the
14 child's face, and bit the child's hand, instead, as it was near his face, trying to get dirt out of his
15 eyes.

16 16. However, all of the so-called "inconceivable circumstances" are irrelevant because
17 there is no dispute that JoJo bit the child, Christian, and that the injury was severe.

18 17. Although the record shows that the owners of the dog feel that JoJo was provoked
19 into injuring the child, there is no percipient witness to testify that JoJo was being provoked by
20 Christian at the time of the attack. Section 10.37.170A of the Los Angeles County Code states
21 that, "No dog may be declared vicious if any injury or damage is sustained by a person who, *at the*
22 *time of the injury or damage was sustained*...was teasing, tormenting, abusing or assaulting the
23 dog." [emphasis added.]

24 18. I have read the declaration of Travis Bosquez. In reading the declaration, I was
25 shocked to read the extent to which Mr. Bosquez claims that these children taunted JoJo, stating
26 that he couldn't "remember a day when they didn't [taunt JoJo]." If even a fraction of the taunting
27 Mr. Bosquez described occurred, I could not understand why a pet owner would allow their dog to
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1 be subjected to such abuse. Further, it seemed illogical to me that, after JoJo had already bit one
2 child, they would then leave the dog outside unattended, as they had the day Christian was bitten.

3 19. More surprisingly, in Denise Wheeler's handwritten declaration dated August 10,
4 2013, she states, "[Christian] would make JoJo go crazy to the point where he would cross the
5 shock line and get shocked himself. They thought it was so funny. Would do it again and again." I
6 cannot fathom why, if she witnessed this, and cares for the dog, why she would allow the dog to
7 be outside unattended.

8 20. Even if they didn't witness every single incident, the Petitioners have submitted
9 declarations from themselves and at least 9 friends saying they saw the children taunting JoJo, or
10 opening the gate. They surely must have been on notice that it was happening. Yet, they continued
11 to leave the dog outside unattended to be taunted or tormented, or even in the unsecured property
12 where children could access the dog.

13 a. Ms. Wheeler stated, "We've caught [Cole] letting the dog out, trying to let
14 out dog out of the gate, as well." (Hearing Transcript, page 24, lines 20-22) But she could not say
15 whether or not that happened the day Cole was bitten, because apparently, JoJo was outside
16 unattended. She goes on in line 23, "I *think* that when he let him out of the gate, that's when JoJo
17 bit him. I don't *think* my dog ran out into the middle of the street and got him." [emphasis added.]

18 b. Ms. Wheeler stated, "We *tried* not to let him out as much without us there,
19 like he wasn't even—with the second [incident], he wasn't out there *that long* without somebody
20 there." [emphasis added.] (Hearing Transcript, page 29, lines 14-17) So, he was outside
21 unattended and this was after the first child had been bitten.

22 c. When the hearing officer further questioned Ms. Wheeler about how the
23 dog could be that tormented when they previously stated JoJo's always in the house, Ms. Wheeler
24 changed her story to, "Because they sit there in their window and tap on the window. And then
25 when I'm outside, I usually have my dog out there with me." (Hearing Transcript, page 48, lines
26 7-9)

27 d. The fact seems to be that they made no changes in their own behavior or to
28 protect the dog until the two children were injured. Ms. Wheeler stated, "Yeah, after the *second*

1 bite, he was never outside by himself.” [emphasis added.] (Hearing Transcript, page 48, lines 21-
2 22)

3 21. Despite the alleged provocation as the only reason that JoJo bit two children, they
4 sought out someone they felt was an expert in animal behavior to, as Ms. Merrill put it, “to see
5 what was wrong with our dog.” (page 18, line 22-23). Ms. Wheeler continued, “...that’s why we
6 had to find [a] behavioral [expert], because it’s not obedience that he needs...like Delores said, it’s
7 behavioral, like he gets excited and like tries to be the alpha dog.” (Hearing Transcript, page 52,
8 lines 18-22)

9 22. Despite the fact that they allege that the dog only bit out of provocation, their
10 “expert” in animal behavior determined that the dog did not have aggression issues even though
11 she “did not antagonize him” and only “did [the] usual aggression tests.” (Hearing Transcript,
12 page 19, lines 21-22)

13 23. As further evidence of the provocation, Mr. Bosquez states in his declaration of
14 August 15, 2013, that “After I installed the electric shock fence, Christian started throwing balls
15 and stuff into the place where JoJo would get shocked near their fence. JoJo would run and chase
16 the balls and get shocked and Christian would laugh.” (Declaration of Travis Bosquez, page 3,
17 lines 14-17). But in the hearing, Ms. Wheeler painted a different picture. “[JoJo] usually doesn’t
18 cross [the electric fence]. Even like sometimes when it gets turned off or the battery has died, he
19 still won’t like cross it. His toy will get in there, and he’ll just leave it.” (Hearing Transcript, page
20 23, lines 14-18)

21 24. Shortly after the JoJo bit Christian, on May 25, 2013, Denise Wheeler made a plea
22 on Facebook to rehome JoJo in a home without children. It seems logical she would have done
23 that to protect JoJo before he was allegedly driven to such madness that he injured two children.
24 To quote the hearing officer, “I think it’s almost a day late and a dollar short.” (Hearing transcript,
25 page 52, lines 10-13)

26 25. During the hearing, Ms. Wheeler stated that, “I feel [JoJo] was provoked to the
27 point where, when he got the chance, he did something.” (Hearing Transcript, page 48, line 3)
28 That’s precisely what the Department is afraid of—if JoJo is once again given the chance.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on August 26, 2013, at Long Beach, California.

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5 PATRICIA LEARNED
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DECLARATION OF SHERI KOENIG

DECLARATION OF SHERI KOENIG

I, Sheri Koenig, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief as, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I have been employed by the Los Angeles County Department of Animal Care and Control since April 24, 1990. From 2006 until 2012, I managed the Major Case Unit and in that capacity oversaw the investigation of humane cases, potentially dangerous and vicious dog cases, and community hazard cases, to name just a few. I am currently assigned as the animal control manager of the Lancaster Animal Care Center.

3. I have personally observed the dog known as "JoJo," animal ID A4549802.

4. Because of the hearing involving JoJo and knowing that there is further review involving the dog, leaving JoJo in our care for an extended period of time, I personally went to check on JoJo on Thursday, August 15, 2013, to ensure that he was being kept in a secured area of the shelter and to make sure that he appeared to be in good health.

5. When I approached the kennel run in which JoJo is being housed, he was extremely aggressive, charged at me through the cage, and viciously barked and growled at me. He continued doing this until I walked away from the cage.

6. The following Monday, August 19, 2013, when I returned on duty, I went to check on JoJo again. This time JoJo barked at me somewhat aggressively, but not nearly to the same extent as the Thursday before. I was surprised that he was acting so differently.

7. Today, August 22, 2013, I once again observed JoJo. As I approached the cage, the dog was jumping up, lunging at the cage door, bearing his teeth, barking, and appeared to be trying to lunge at my face and my hands as I tried to open the guillotine door to the kennel run. It was quite scary. This was by far the worst behavior I have seen from this dog from all interactions.

8. Based on my 23 years with this Department, and my many years of investigating potentially dangerous and vicious dog case, and cases of dogs causing a hazard to the community,

1 and my own personal observations of this dog, JoJo is extremely unpredictable and poses a
2 significant threat to public safety.

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4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct.

6 Executed on August 28, 2013, at Lancaster, California.

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SHERI KOENIG

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DECLARATION OF CHRIS CIRAR

DECLARATION OF CHRIS CIRAR

I, Chris Cirar, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief as, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I have been employed by the Los Angeles County Department of Animal Care and Control since May 2007. I started as an Animal Shelter Aid and was promoted to Animal Control Officer I in September 2009, and again to Animal Control Officer II in January 2013. I became certified to conduct canine behavior assessments in December 2010 and I became a behavior assessment trainer in May 2012. I was assigned as acting kennel sergeant of the Lancaster Animal Care Center in June 2013 and currently continue to serve in that capacity.

3. I have personally observed the dog known as "JoJo," animal ID A4549802.

4. During the past two months of JoJo's impoundment, while doing my rounds of the facility, I have frequently observed JoJo acting aggressively when I have passed his cage. He jumps on the inside cage door, barking, growling and baring his teeth.

5. On August 22, 2013, at approximately 10:30 a.m., I was assigned to assist Dr. Jennifer Kwan in handling JoJo while she performed a behavior assessment on JoJo. Animal Control Manager Sheri Koenig also observed at that time.

6. After Dr. Kwan did her initial in-cage assessment of JoJo, she asked me to remove JoJo from the cage. I proceeded to the front of the cage, knelt down and talked to JoJo in a friendly manner. JoJo came to the front of the cage, jumping, barking and baring his teeth.

7. I proceeded to open the outside door to the cage and attempted to place a rope on JoJo to remove him from the cage. JoJo kept running back and forth from the front to the back of the cage. When I tried to place the rope on JoJo, he kept trying to bite the rope.

8. JoJo seemed very anxious and we determined it was unsafe to remove JoJo from the cage at that time. We decided to give JoJo a break to see if he would calm down before proceeding with the assessment.

9. Around 1:30 p.m. on the same day, Dr. Kwan, Dr. San Juan and I attempted to continue the behavior assessment on JoJo.

10. Once again, I proceeded to the front of the cage, knelt down, and spoke to JoJo in a friendly manner. JoJo once again came to the front of the cage, jumping, barking and baring his teeth. I proceeded to open the cage and place a rope on JoJo to remove him from the cage. But JoJo continued to display the same behavior as he had previously, biting at the rope. After several attempts to remove JoJo from the cage using only the rope, I had to use an animal control device known as a "control pole" or "catch pole," to remove him from the cage safely.

11. Once I removed JoJo from the cage, I was able to place the rope on him and discontinue the use of the animal control device. We walked JoJo over to a secluded “get acquainted” area on the west side of the building where Dr. Kwan continued her assessment. I understand Dr. Kwan has submitted the complete results of her assessment.

12. When the assessment was complete, I once again used the animal control device to place JoJo back in his kennel run.

13. Based on my own personal observations of this dog, JoJo is extremely unpredictable and poses a significant threat to public safety.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 28, 2013, at Lancaster, California.

CHRIS CIRAR

DECLARATION OF MISTY HIRSCHBEIN, DVM

DECLARATION OF MISTY HIRSCHBEIN, DVM

I, Misty Hirschbein, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief as, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I have been a licensed veterinarian in the State of California since 2004. I also hold a Master's Degree in Agriculture and I am a certified veterinary acupuncturist. I practiced veterinary medicine in private practice for 10 years from 2003 through 2013. I have been employed by the Los Angeles County Department of Animal Care and Control since March 2013 as a veterinarian at the Lancaster Animal Care Center.

3. I have personally observed and examined the dog known as "JoJo," animal ID A4549802.

4. I have observed JoJo on several occasions while doing my daily rounds. When approaching JoJo in his cage, he will bark, jump up onto the kennel door while showing his teeth pressed up against the bars. He will raise his lips and bear his teeth.

5. I have been able to easily monitor any injuries to the pads of JoJo's feet and limbs because he jumps at the kennel door. No injuries have been observed.

6. We have tried to reduce the stressors that may be affecting JoJo's behavior by keeping him at the end of the row of the building (so there is only one dog housed next to him) and we try to house only quieter dogs within view of him. He's been impounded for nearly two months. JoJo appears to not have acclimated to his surroundings.

7. Even in the shelter clinic, which is much quieter and there aren't animals in close proximity, JoJo was still on high alert and nervous.

8. I was asked to examine JoJo to make sure he was in good health, which I did on August 20, 2013. Sgt. Rachel Montez-Kemp could get a leash around his head, but all I could do was weigh him. Because he was so nervous, I did not feel comfortable touching him without restraint. If this dog were presented to me in private practice, I would ask the owners to muzzle him prior to examination or maybe recommend sedation.

1 9. Animal Control Officer William Saunders works frequently in the building where
2 JoJo is housed, so JoJo is likely familiar with Will. When Will approached and took over handling
3 the dog, JoJo became a different dog. JoJo seems to have bonded with Will. Will was able to
4 restrain JoJo so that I could safely examine him. For everyone's safety and wellbeing, I have
5 recommended that Will be present during any and all examinations while JoJo is in our care.

6 10. As I was listening to JoJo's heart, which is simply placing a stethoscope on the
7 chest of the dog and causes no pain, JoJo quickly turned his head around at me. Will had control
8 over his head, so no contact was made. This action was silent and without warning. He did not
9 bark, or growl before doing so.

10 11. After nearly two months in impound, JoJo remains in good health with a body
11 condition score of 5/9, weighing 59 pounds.

12 12. I was trying to give JoJo special food and treats to see if I could win him over. I
13 was able to give him food directly from my hand. He took the food from my hand gently, and did
14 not bite my fingers. However, he remained tense and did not relax. Since then, he still acts
15 aggressively towards me when I walk past his cage.

16 13. We took JoJo out on the grassy area so he could have a break from his cage. Most
17 dogs under those circumstances would have relaxed and urinated. JoJo, however, never urinated
18 nor relaxed. He sniffed the air and ground but did not engage with us.

19 14. I have been bitten in completely unprovoked attack myself. Many years ago, I was
20 once bitten by a Rottweiler that was a patient in the clinic where I worked. I was holding the dog's
21 leash while he sat quietly next to me. I was not touching him at all. Without any warning, the
22 Rottweiler reached up and bit my hand causing puncture wounds. Then the dog released my hand,
23 and it was done. Other staff rushed over and took control of the dog.

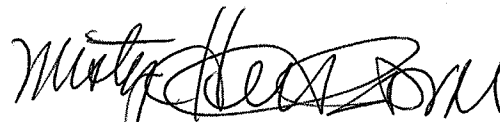
24 15. In my opinion, provocation has to be an immediate cause and effect reaction.
25 When the dog experiences a painful stimulus or perceived threat, if it is going to react, it will react
26 immediately. Dogs do not plot their revenge and act out at a later time in response to a perceived
27 wrong.

28 16. Based on my interaction with the dog, in my opinion, I think JoJo is unpredictable.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 28, 2013, at Lancaster, California.


MISTY HIRSCHBEIN, DVM

DECLARATION OF JENNIFER KWAN, DVM

DECLARATION OF JENNIFER KWAN, DVM

I, Jennifer Kwan, declare as follows:

1. I am over the age of 18. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief as, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I have been a licensed veterinarian in the State of California since 2012. I also have a Bachelor of Science in Animal Science with an emphasis on Animal Behavior, and Companion and Captive Animals. I have been employed by the Los Angeles County Department of Animal Care and Control since August 2013 as a veterinarian. I am currently assigned to the Carson Animal Care Center.

3. I personally conducted a behavior assessment of "JoJo," (A4549802) at the Lancaster Animal Care Center on August 22, 2013.

4. My understanding of JoJo's history prior to the assessment was that he had a history of biting two children on two separate occasions. In one case, the child suffered severe lacerations on his hand. JoJo has been housed at the Lancaster Animal Care Center for two months.

5. My assessment was conducted at the animal care center while the dog was in his kennel and in a fenced "get acquainted area" at the care center.

6. Lancaster Acting Kennel Sergeant Chris Cirar assisted in the handling of JoJo. Lancaster Shelter Veterinarian Dr. Joselito San Juan observed my assessment, as well.

7. When we initially tried to remove JoJo from the cage with a loose lead, he attempted to bite the Kennel Sergeant Cirar's hand. Therefore, we thought it would be best to allow JoJo to calm down a bit in his cage before continuing with the assessment. We once again attempted the assessment approximately 2 hours later.

8. My assessment included testing JoJo's reaction to several different situations and stimuli. My complete report is attached as Exhibit A.

9. I noted the following problems:

a. Attempting to bite unfamiliar people in the kennel

1 b. Barking, jumping, lunging and growling at unfamiliar people in the kennel
2 and across a fence barrier

3 c. Biting and growling at the food bowl

4 10. JoJo was assessed to have the following aggression issues:

5 a. Stranger-directed aggression (both offensive and defensive)

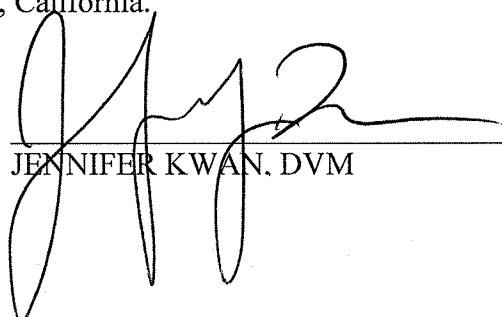
6 b. Stranger-directed aggression (offensive)

7 c. Moderate to severe food bowl aggression

8 11. In summary, JoJo's fear aggression is most evident in the kennel. He displays signs
9 of anxiety and subtle displacement behaviors within the kennel. He is defensive when approached
10 in front of his kennel with an offered hand. He is also initially defensive when he is trying to get
11 away from being leashed in his kennel, but then shows outwardly offensive aggression with
12 forward body posture, barred teeth, lunging and biting. JoJo was offensively aggressive when
13 interacted with across a fence barrier. As he was increasingly aroused, his play-bow posture
14 escalated to aggression of teeth barring, growling and lunging.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct.

17 Executed on August 23, 2013, at Carson, California.

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20 JENNIFER KWAN, DVM
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Behavior Assessment of "JoJo" A4549802
Jennifer Kwan, DVM
Assessment Conducted 8/22/2013

Subjective:

The patient, JoJo, has a history of biting two children, a six year old boy on March 4, 2013 and an eight year old on May 16, 2013.

JoJo was raised with his owners since the age of 5 weeks. The family household consists of the matriarch, her son, her son's girlfriend, and a 12 month old female child. A second 12 year old female child is there part-time. The family lives in a trailer home. A 4-foot chain-link fence separates the property between neighbors. The dog reportedly would run along the fence adjacent to the neighboring yard, kicking up dirt as this is located in the high desert. The owners subsequently added an electric fence around their property in efforts to decrease this behavior. The electric fence was added in January 2012, approximately 2-3 months after the dog moved into the property, but 3 months prior to the first bite incident. The neighbors reportedly would taunt and harass the dog on the opposite side of the slatted fence and the electric fence by calling his name, tapping on the window, and throwing a ball into the electric fence field, to elicit JoJo's reaction to the shock.

In the first case, the child sustained three minor puncture wounds and abrasions to his hip, thigh, and buttocks. It was suspected that the child opened the gate and let the dog out of his fenced yard. However, there were no adult witnesses to this incident. Thereafter, the owners of the dog placed chains and locks around the gates, but would still leave the gates unsecured and the dog outside when expecting guests.

In the second case, the child suffered severe lacerations on his hand, which required multiple surgeries to correct. The child, who lives next-door, reportedly was rubbing dust out of his eyes with his hand when JoJo jumped the fence and bit the child's hand.

JoJo has been housed in the Lancaster Animal Shelter for approximately 2 months. The patient's behavior was assessed while in the shelter on 8/22/2013.

Objective:

- 1) Patient in cage with evaluator silent
 - a. Evaluator approached the kennel door with side of body and gaze averted
 - i. Patient quickly approached the kennel gate with his head held high above the level of the body and an evenly balanced but tense body posture. He also displayed a high, fast-wagging tail. He sniffed the air towards the direction of the evaluator and off to the side of his kennel.
 - b. Evaluator stood in front of the kennel door with gaze averted, facing JoJo
 - i. Patient had forward ears with slight lip-licking. Patient walked away to other side of kennel, past the guillotine partition, and stood on the other side of the cage with tense body posture directed towards the evaluator.
- 2) Patient in cage with evaluator verbalizing and eliciting interaction

- a. Evaluator standing
 - i. Patient came forward to the cage door and stood on his hind limbs with moderately wagging tail. When the evaluator made eye contact with JoJo, he would freeze and lick lips.
 - b. Evaluator kneeling
 - i. Patient came forward to the cage door with slight hesitation and tail slightly tucked between his legs. Patient performed several stretches.
 - c. Hand offered while kneeling
 - i. Evaluator offered the back of her hand and wiggled her fingers approximately 1 foot away from cage door. The patient quickly froze with tense body posture and slightly pinned ears, then JoJo displayed a low growl followed by slightly raised lips revealing only his incisors and canine teeth.
- 3) Taking patient out of kennel by unfamiliar officer
- a. An unfamiliar, male officer in uniform attempted to take the patient out of the kennel with a loose lead. Patient displayed a high wagging tail, but then froze with ears back, tense body posture, and retreated backwards. He was seen once lifting up his front paw while sitting. JoJo made multiple attempts to bite the officer's hand with lunging and jumping postures. During these attempts, the patient displayed the behaviors of bared teeth, panting, circling, and lunging toward the officer's hand.
 - b. The patient was obtained out of the cage with the use of a come-along pole. He walked out of the kennel with the come-along pole with no struggle. The loose leash was then put around the patient. He had evenly balanced, but tense body posture with no signs of growling or lunging.
- 4) Out of kennel, on leash, and walking to play area outside
- a. Patient was greatly focused on smelling the environment and did not pay attention to his handler or the evaluator. He walked on leash with no pulling or lunging. Patient displayed a crouched body position with his head down, eyes down to the ground, and ears forward and was entirely focused on smelling the ground.
- 5) Play area
- a. The patient was allowed to walk in a fenced, grassy play area with an extended loose leash of approximately 6 feet in length. The officer loosely held on to the other end of the leash at all times in the play area. JoJo continued to sniff all areas of the play area with an evenly balanced, tense body posture. The evaluator allowed the patient to acclimate and familiarize himself with the area before interacting with him.
 - b. Handleability and sociability with the evaluator
 - i. The evaluator threw treats in JoJo's direction, which he readily ate. He then gave full attention to the evaluator with direct stares and forward body posture. JoJo readily performed the commands of sit, shake, and down with the use of treats. JoJo would take the treat from the evaluator's hand readily with no hesitation. The evaluator was able to pet JoJo on the head and the back of the neck several times while JoJo finished eating the treat he was just given. His body

posture was evenly balanced with his head held high with no freezing or darting eyes while being petted.

- c. Food bowl aggression
 - i. The patient was offered canned food in a bowl. He quickly and readily ate the food. When a canvas glove on a stick was introduced to the food bowl, JoJo froze for less than a second and bit the glove. He bit the glove with a hard, full bite. The second time the glove was introduced, he growled for about 1 second and bit the glove with full force and then proceeded to eat his food again.
 - d. Possession aggression
 - i. JoJo was not interested in the dog toys offered to him and would ignore them even while elicited to play.
 - e. Playfulness
 - i. Patient was highly excitable during play with evaluator and did not settle easily. Patient remained highly aroused in the play area during the entire evaluation.
 - f. Unfamiliar person at fence
 - i. An unfamiliar person went outside the fenced play area and interacted with the dog in the following sequence: calling his name, running back and forth, and shaking the fence. JoJo responded several times with a high pitch barks, jumping at the fence, and displaying the "play-bow" posture. As the person increased the level of excitement across the fence, JoJo became progressively aroused with higher and more frequent jumping and forward lunging at the gate. His barks were no longer high-pitched and at the height of his arousal he then play-bowed with bared front teeth, a low growl, and lunged.
- 6) Reaction to dogs/cats: did not evaluate
- 7) Return to kennel
- a. For the safety of the handler and evaluator, the patient was placed with a come-along pole. The patient did not fight the come-along pole when placed around his neck, and a loose leash was put on the dog. The patient walked readily back into his kennel.

Problems:

- 1) Attempting to bite unfamiliar people in the kennel
- 2) Barking, jumping, lunging, and growling at unfamiliar people in the kennel and across a fence barrier
- 3) Biting and growling at the food bowl

Assessment:

- 1) **Stranger-directed aggression (both defensive and offensive)**
- 2) **Stranger-directed aggression (offensive)**
- 3) **Severe food possessive aggression**

Summary and Recommendations:

- 1) Stranger-directed aggression (both defensive and offensive)

- a. JoJo's aggression was most evident within the kennel. He displayed subtle displacement behaviors, which are often a sign of anxiety.
- b. He was defensive when offered a hand in front of his kennel door. He was also initially defensive when he avoided being leashed while in his kennel, but then showed outwardly offensive aggression with forward body posture, bared teeth, lunging, and biting.
- c. JoJo's aggression while in the kennel is greatly concerning for the safety of those potentially handling and taking care of him. Although he initially displayed signs of fear and anxiety when approached at his kennel door, he clearly exhibited lunging and biting towards people. His active growling and bared teeth were not out of defense and/or fear. He displayed only his front incisors and canines, which is indicative of active, offensive aggressive. These actions show that JoJo is a liability, as he would reliably and intentionally attempt to bite with full force.

2) Stranger-directed aggression (offensive)

- a. JoJo was offensively aggressive when interacted with across a fenced barrier. As he increasingly was aroused, his play-bow posture escalated to aggression of teeth barring, growling, and lunging.
- b. JoJo's aggression at a fence is also very concerning. His highly aroused temperament, as evidenced by his quick escalation, makes him much more dangerous, as he has chosen to display aggression when aroused, versus choose another behavior, such as leave or play with a toy.
- c. Given the statements that JoJo had an electric fence in attempts to prevent him from acting out along the fence, there is a high possibility that he could have formed a negative association with the people he viewed across the fence. Whether or not children were taunting him, the electric fencing was a poor method to curb his high state of arousal and could have further caused his aggression.

3) Severe food bowl aggression

- a. JoJo gave minimal time and warning signs prior to dvbiting a glove at the food bowl.
- b. Given his limited warnings and full intent to bite hard at the food bowl, I would be seriously concerned that this dog be in the presence of people, especially children. Because small children are at the level of the food bowl, they pose a greater risk of being bit if they were to walk pass the dog while eating or attempted to pick up the food bowl.

- 4) I must take into account the safety and welfare of everyone involved in this case, including JoJo. He is a strong dog with human-directed aggression, aggression that escalates from a high arousal state, and severe food possession aggression. Based on the aggression displayed during his assessment, his history of biting two children on two separate occasions, and the inability for the owners to maintain JoJo in a safe, secure environment, JoJo is a great liability to the safety of children and other people. My recommendation would be that JoJo be euthanized. I believe that, even

if a person other than the owner were to take ownership of JoJo, he would display these same behaviors.

- 5) If JoJo were to remain alive, regardless of who owns him, strong, very stringent control measures would need to be placed. JoJo cannot have contact with children, whatsoever. He can never be around another person without a properly fitted basket muzzle. Additionally, he should always be on leash when around people, with the leash being no longer than 4 feet long from the handler. He must be current on his rabies vaccination status. JoJo must be kept behind locked, secure doors when the owner is home. He can never be left alone when outside to eliminate, and must be on leash at all times. If he needs to be unattended in the backyard, he must be in a secure kennel that is double-gated on all sides (including top and bottom), buried fencing, and a lock at a height in not within reach of a child. However, given that JoJo has displayed aggression in the kennel, I do have concerns of his welfare if kept in the kennel. I cannot predict if being in a kennel for long periods of time will worsen JoJo's behavior, but some animals enclosed for extended periods have developed stereotypic, repetitive behaviors (e.g. pacing). The highest level of vigilance needs to be enabled to keep this dog alive, and these are the minimal requirements that should be placed.



Jennifer Kwan, DVM

DECLARATION OF HAROLD W. HOLMES, ESQ.

DECLARATION OF HAROLD W. HOLMES

I, Harold W. Holmes, declare as follows:

1. I am a Deputy Director with the County of San Diego, Department of Animal Services.

I am also an attorney duly admitted to practice in California state courts.

2. I have over 13 years experience in animal control, including three years in the County of San Diego Department of Animal Services (DAS) Vicious Dog Task Force, regulating public nuisances and vicious or vicious dogs. During that time I participated in over 50 hearings. I have received training in the conduct of administrative hearings from the Office of County Counsel for the County of San Diego. I have been the DAS administrative hearing officer for the last five years. I have instructed animal control officers and supervisors in the conduct of administrative hearings and in the regulation of public nuisances and vicious dogs. I have served as a hearing officer for administrative hearings for allied agencies on several occasions, including the San Diego Humane Society and SPCA, the Escondido Humane Society, and the County of Los Angeles Department of Animal Care and Control.

3. I am also an honorably retired peace officer, and a former police K-9 handler. While at Redlands Police Department, I had a German-import, Schutzhund I, patrol dog that was in service for eight years. I also trained with, certified, and handled a narcotics detection dog for a short time. During my service dog handling years, I trained with several different trainers utilizing different training techniques and philosophies.

4. I have no personal or pecuniary interest in the outcome of this case, or in the conduct of this review. My review and conclusions are based on the facts in the documents provided to me, that I am informed and believe to be true, together with the experience noted above.

5. I was asked by Patricia Learned, from the Los Angeles County Department of Animal Care and Control to review this matter to determine, whether, in my judgment, the conduct of the administrative hearing was in accordance with applicable law and that the finding that the dog, JoJo is vicious, and the decision to order the dog to be destroyed is based on substantial evidence.

6. The report of my review, which is attached hereto as Exhibit A, is based upon the

record of the administrative hearing that took place on July 29, 2013, as submitted by the County of Los Angeles Department of Animal Care and Control, including over 160 pages of documents: the Notice of Hearing, the Petition for Administrative Hearing to Determine if Dog is Vicious, with several attachments; copies of evidence submitted at the hearing, including a report from an independent investigation by ISC Investigations located in Downey, CA; and a transcript of the hearing proceedings.

7. In sum, I concluded that the Los Angeles Department of Animal Care and Control acted within its authority; that a fair hearing was conducted, that the finding that the dog is vicious and the decision to euthanize the dog were based on substantial evidence, and there was no prejudicial abuse of discretion. Furthermore, it is my opinion that releasing JoJo to a rescue organization would not ensure the public safety for the reasons set forth in the report.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 26, 2013, at San Diego, California.

[Handwritten signature]

Harold W. Holmes

EXHIBIT A

1 Department of Animal Services
County of San Diego
2 5480 Gaines Street
San Diego, California 92110
3 Telephone: (619) 767-2605
4

5 **IN THE MATTER OF**

6 County of Los Angeles v.

7 Travis Bosquez and Rebecca Merrill

8 **REGARDING** Vicious Dog Hearing

9 **OF** July 29, 2013

ADMINISTRATIVE REVIEW

OF

VICIOUS DOG HEARING

IN LOS ANGELES COUNTY

12 **I**

13 **INTRODUCTION**

14
15 The Los Angeles County Department of Animal Care and Control (LACACC), on behalf of the
16 County of Los Angeles (Petitioner), requested a review and opinion of the Vicious Dog hearing (County
17 of Los Angeles v. Travis Bosquez and Rebecca Merrill; case #13-015520) conducted on July 29, 2013.
18 Deputy Director Harold W. Holmes was assigned to conduct the review.
19

20 Having reviewed the record of the hearing, it is my determination that:

- 21 1. LACACC has proceeded within its authority.
22 2. There was a fair hearing.
23 3. There was no prejudicial abuse of discretion.
24

25 **II**

26 **QUALIFICATION TO CONDUCT REVIEW**

27
28 This review is based upon the record of the administrative hearing that took place on July 29,

1 2013, as submitted by LACACC, including over 160 pages of documents: the Notice of Hearing, the
2 Petition for Administrative Hearing to Determine if Dog is Vicious, with several attachments; copies of
3 evidence submitted at the hearing, including a report from an independent investigation by ISC
4 Investigations located in Downey, CA; and a transcript of the hearing proceedings.

5
6 I am an honorably retired peace officer, and a former police K-9 handler. While at
7 Redlands Police Department, I had a German-import, Schutzhund I, patrol dog that was in
8 service for eight years. I also trained with, certified, and handled a narcotics detection dog for a
9 short time. During my service dog handling years, I trained with several different trainers
10 utilizing different training techniques and philosophies.

11
12 I have over 13 years experience in animal control, including three years in the County of
13 San Diego Department of Animal Services (DAS) Vicious Dog Task Force, regulating public
14 nuisances and vicious or vicious dogs. During that time I participated in over 50 hearings. I have
15 received training in the conduct of administrative hearings from the office of county counsel for
16 the County of San Diego. I have been the DAS administrative hearing officer for the last five
17 years. I have instructed animal control officers and supervisors in the conduct of administrative
18 hearings and in the regulation of public nuisances and vicious dogs. I have served as a hearing
19 officer for administrative hearings for allied agencies on several occasions, including the San
20 Diego Humane Society and SPCA, the Escondido Humane Society, and LACACC.

21
22 I am also an attorney, licensed to practice in the state of California. Lastly, I have no
23 personal or pecuniary interest in the outcome of this case, or in the conduct of this review.

24 25 III

26 DISCUSSION

27
28 Los Angeles County Code (LACC) section 10.37.10 authorizes LACACC to seize and impound

1 animals posing an immediate threat to public safety. LACC 10.37.110 gives LACACC the authority to
2 administratively regulate potentially vicious and vicious dogs as defined elsewhere in LACC. LACACC
3 has the authority, under LACC 10.37.140, to destroy a vicious dog, "when it is found ... that the release
4 of the dog would create a significant threat to the public health, safety and welfare."
5

6 In this case LACACC seeks to declare Respondents' dog "JoJo" (A 2-year-old, brown and black,
7 male, Pit Bull/Rottweiler mix, animal ID #A4549802) a vicious dog, as defined in LACC 10.37.030, and
8 abate the dog by destruction. Respondents reside, with "JoJo," at the Desert Sands Mobile Home Park at
9 4511 E. 25th St. Lancaster, CA 93535. All incidents are alleged to have occurred in that mobile home
10 park. The location, in Lancaster, California, is within the service area of LACACC. The subject matter
11 (violations of LACC Title 10 related to animals) is within the duties of LACACC. Therefore, this dog
12 and the administrative action being sought are within the jurisdiction of LACACC.
13

14 LACACC impounded Respondents' dog "JoJo" (A 2-year-old, brown and black, male, Pit
15 Bull/Rottweiler mix, animal ID #A4549802) on June 27, 2013, pursuant to a search warrant in the
16 interest of public safety. According to the documentation provided, the basis on which the search
17 warrant was obtained is the allegation that Respondents' dog "JoJo" had on two separate occasions—
18 since March 1, 2013—bitten a person, with the second incident resulting in severe injury as defined in
19 LACC 10.37.040.
20

21 There is no indication in the record that Respondents challenged the sufficiency of the search
22 warrant or of the seizure of their dog "JoJo." As an administrative hearing officer, it is not within my
23 jurisdiction to review or pass judgment on the decision of the Superior Court judge who evaluated the
24 affidavit for the search warrant for the dog "JoJo." As this issue was not raised at the hearing, it is
25 presumed in this review that the search warrant was valid and based upon sufficient legal cause and
26 authority. Further, the legality of the impoundment of Respondents' dog "JoJo" is irrelevant to the issue
27 of whether or not the dog is vicious. Administrative regulation of a vicious dog may progress even when
28 the dog is in the custody of the owner. Even if the impoundment of "JoJo" was in violation of the Fourth

1 Amendment, the remedy would be the return of the dog pending this administrative hearing but would
2 not nullify these proceedings.

3
4 Respondents were given notice on or about July 16, 2013, that LACACC has scheduled an
5 administrative hearing for July 29, 2013 at their administrative office at 5898 Cherry Ave., Long Beach,
6 for the purpose of determining whether "JoJo" is a vicious dog. LACC 10.37.110 requires that, "the
7 hearing shall be held promptly within no less than five working days nor more than 10 working days
8 after service of the notice upon the owner or custodian of the dog." July 29 is 13 calendar days and the
9 ninth working day after July 16, which is within 10 working days. Therefore it appears that LACACC
10 has met its burden of timeliness in providing the administrative hearing.

11
12 LACACC's petition to declare "JoJo" a vicious dog and abate the dog by destruction is based
13 upon the following allegations:

14 On March 1, 2013, "JoJo" bit a child riding on a scooter at the Desert Sands Mobile Home Park
15 in Lancaster, CA 93535; and,

16 On May 16, 2013, "JoJo" bit Christian Gonzalez, an eight-year-old boy, on the left hand
17 resulting in a severe injury. The bite resulted in two surgeries to repair the wound.

18
19 When the government seeks to infringe upon the property interests of the public, such as when
20 the government (LACACC) seeks to deprive Respondents of their property ("JoJo") the tenets of Due
21 Process must be observed. Respondents must have been afforded notice and a meaningful opportunity to
22 be heard. The administrative hearing process seeks to comply with these requirements. In this case
23 Respondents were given notice in advance of the hearing. That notice informed them of the specific
24 allegations of violations and evidence in the possession of LACACC. It also states that, "at the hearing,
25 you may present evidence as to why the dog should not be declared ... vicious." (Notice of Hearing.)
26 The transcript of the hearing that was conducted supports the assertion that Respondents were given an
27 opportunity to present evidence at the hearing as well as to challenge the evidence and testimony

28 ///

1 presented by witnesses for LACACC.

2
3 While there is no evidence that LACACC affirmatively informed Respondents that they could be
4 represented by counsel at the administrative hearing, in this administrative setting there is no
5 requirement to so notify. Neither does the record reflect any indication that Respondents sought to be
6 represented by counsel. From personal experience, I know that LACACC has in the past not objected to
7 or prohibited dog owners from being represented by legal counsel throughout the administrative
8 regulation process including at the administrative hearing. Thus, it would be a departure from standard
9 practice and out of character for LACACC for such a denial of representation to occur.

10
11 Administrative hearings often are decided by hearing officers who are employees of the
12 governmental agency involved in the action. This is supported by case law including *Brown v. City of*
13 *Los Angeles*, (102 Cal. App. 4th 155, 125 Cal. Rptr. 2d 474 (2nd Dist. 2002)), *Haas v. County of San*
14 *Bernardino*, (27 Cal. 4th 1017, 119 Cal. Rptr. 2d 341 (2002)), and *McIntyre v. Santa Barbara County*
15 *Employees' Retirement System* (91 Cal. App. 4th 730 (2001)). *McIntyre* held that bias may not be
16 presumed where there is a lack of evidence to show bias. In this case the hearing officer was an
17 employee of LACACC, but in the record there is no evidence of bias or prejudice against Respondents.
18 Nor did Respondents object to the hearing officer, despite the knowledge (as stated on the record) that
19 the hearing officer was an employee of LACACC. Therefore, there is no indication that Respondents did
20 not receive a fair hearing as Due Process demands.

21
22 The burden of proof in administrative hearings, such as this vicious dog hearing, lies with
23 LACACC, and the standard of proof is preponderance of the evidence. The burden is on LACACC in
24 this case to show that Respondents' dog "JoJo," "when unprovoked, in an aggressive manner, inflict(ed)
25 severe injury on ... a person." (LACC 10.37.030(B).) Of the multiple qualifying criteria contained in
26 LACC 10.37.030 by which a dog may be declared vicious, subsection (B) is the only applicable criteria.

27
28 LACC 10.37.110 requires that, in order to initiate administrative proceedings to declare a dog

1 vicious, LACACC must first investigate and determine "that there exists probable cause to believe that a
2 dog is ... vicious." In this case, several exhibits were submitted with the Petition for Administrative
3 Hearing to Determine if Dog is Vicious. Those exhibits include investigative reports conducted after
4 each of the alleged incidents. The statements taken and evidence collected (including photographs of
5 injuries and medical records) clearly establish that animal control officers conducted an investigation,
6 and that based upon that investigation there was sufficient cause to believe that Respondents' dog "JoJo"
7 had engaged in conduct that met the criteria to be declared vicious.

8
9 During the course of the hearing Respondents did not dispute that "JoJo" bit and inflicted injury
10 on eight-year-old Christian Gonzalez on May 16, 2013. Evidence presented at the hearing clearly
11 establishes that the wound inflicted by "JoJo" on the boys hand rises to the level of severe as defined in
12 LACC 10.37.040. That section defines severe injury as "any physical harm to a human being that results
13 in a serious illness or injury, including but not limited to a major fracture, muscle tears or disfiguring
14 lacerations requiring multiple sutures or corrective or cosmetic surgery." The bite wound consisted of a
15 large laceration and loss of tissue which resulted in multiple surgeries including the repair of a tendon
16 and a skin graft. The only remaining question is whether the bite was "provoked."

17
18 Lack of provocation for the bite is both an element of the definition of a vicious dog and an
19 affirmative defense to a vicious dog declaration. The issue of provocation is always a difficult one, as it
20 can be argued that every bite is provoked—at least in the mind of the biter dog. However, to use that
21 standard would create an absurd result in that it would render the statute useless and defeat the stated
22 intent of the legislative body in enacting regulations proscribing attacks by vicious dogs.

23
24 LACACC has introduced testimony regarding the circumstances surrounding the May 16, 2013
25 bite to Christian Gonzalez. That testimony describes that when Gonzalez was retrieving a ball that had
26 strayed near the property line and fence between Respondents' yard and Gonzalez's the dog jumped up
27 and bit him on the hand. There was no testimony or evidence offered that would indicate that Gonzalez

28 ///

1 was teasing, tormenting or provoking "JoJo" just prior to the bite.

2
3 There was conflicting testimony in the hearing regarding the historical conduct of Respondents'
4 dog "JoJo" as well as of the children involved in the two reported bite incidents. Respondents argue that
5 both of the children that were bitten, as well as an adult living next door, have repeatedly teased or
6 tormented "JoJo" by throwing objects including rocks at the dog or by spraying the dog with water on
7 one occasion. Some witnesses described "JoJo" as acting aggressively and 'fence fighting' with
8 neighbors, while others described the dog as quiet and never barking. Without the benefit of being at the
9 hearing and evaluating the credibility of each of these witnesses it is impossible to determine the honesty
10 of any of them. However, it is entirely within the realm of possibility that all were telling the truth and
11 relating their own personal experiences.

12
13 It is critical to note that no adult witnessed the bite to Christian Gonzalez on May 16, 2013.
14 Therefore it is impossible to know with certainty exactly what transpired immediately prior to the bite.
15 There is a minor inconsistency in testimony regarding whether "JoJo" jumped completely over the fence
16 separating Respondents property from the neighboring property where Gonzalez was playing at the time
17 of the bite, or merely stood on his back legs and reached over the fence. However, it is not necessary to
18 determine which of those two scenarios actually occurred. Every indication is that Gonzalez was
19 lawfully on private property separated—by a 4' wire fence—from Respondents yard at the time of the
20 bite. He was reportedly retrieving a ball that had strayed near the property line and fence.

21
22 Respondents argue that past acts of rock throwing and being sprayed with hose justify "JoJo"
23 biting Gonzalez on May 16, 2013. Would such an action constitute provocation for a bite *assuming* that
24 Gonzalez had, on previous occasions, thrown rocks at or otherwise teased the dog? Would the past
25 teasing of the dog by other children, or even an adult who lives next door, be sufficient to provoke
26 "JoJo" to bite Gonzalez simply because he came within close proximity to the dog? Such other

27 ///

28 ///

1 difficulties with the issue of whether the bite was "provoked."

2
3 Respondents' argument of provocation, however, is ineffective. It ignores the fact that
4 Respondents knew that "JoJo" was being tormented by children in the neighborhood and continued to
5 maintain the dog outdoors where it was subjected to that activity. Respondents were put on notice that
6 "JoJo" had the propensity to bite children on March 1, 2013, when the bite victim's father told them that
7 "JoJo" had bitten his son. In response, Respondents put a lock on the gate to the 4' tall fence to prevent
8 unauthorized access by neighborhood children and in an attempt to contain the dog. But, contrary to
9 Rebecca Merrill's testimony at the hearing that "JoJo" was kept indoors, it appears that "JoJo" remained
10 largely an outdoor dog. Respondents cannot absolve themselves of responsibility for the conduct of the
11 dog by saying the dog was teased repeatedly when they placed the dog in the situation where that
12 occurred. In such close quarters as are found in a family mobile home park, where children are
13 abundant, it is unrealistic to expect that parents will at all times prevent children from engaging in
14 playful conduct that might be perceived as being teasing to a dog. Children generally lack the experience
15 and knowledge to at all times appropriately interact with strange dogs. It is common, and to be expected,
16 that children will experience fear of a dog they are not familiar with—especially if it barks at their
17 presence or activity—and respond by doing something that further stimulates the dog (such as throwing
18 dirt or rocks to deter the dog from approaching). The only certain way of preventing such acts of teasing
19 is to remove the dog from a situation where it may occur.
20

21 Thus, the evidence tends to support the hearing officer's decision that Respondents' dog "JoJo"
22 is a vicious dog as defined in LACC 10.37.030.
23

24 LACC 10.37.140 lists the consequences of a vicious dog declaration. Among those consequences
25 are, "(a) dog determined to be a vicious dog may be destroyed by the Department when it is found, after
26 proceedings conducted under Section 10.37.110, that the release of the dog would create a significant
27 threat to the public health, safety and welfare." (LACC 10.37.140(A).) Subsection (B) goes on to state,
28 "If it is determined that a dog found to be vicious shall not be destroyed, the judicial officer or

1 administrative hearing officer shall impose the conditions upon ownership of potentially dangerous dogs
2 required by Section 10.37.130, the conditions required by this section, and any other conditions
3 necessary to protect the public health, safety, and welfare."
4

5 The hearing conducted on July 29, 2013, fulfills the requirement of LACC 10.37.140(A), in that
6 it was conducted under LACC 10.37.110.
7

8 When a hearing officer is considering abating a declared vicious dog by destruction, the hearing
9 officer has the obligation to determine whether any reasonable and less drastic means of abatement
10 exists, yet still ensures the health and safety of the public. Factors for consideration include:

- 11 • Any previous history of the animal interfering with public interests;
- 12 • The nature and extent of the injuries, property damage, violation(s), or other interference(s)
13 with public interests and the number of incidents involved;
- 14 • The location where the incident(s) occurred;
- 15 • The place and manner in which the animal has been maintained;
- 16 • The frequency, continuity, or duration of any act(s) or omission(s) of the owner or custodian
17 that led to the interference(s);
- 18 • Whether the owner has made a good faith effort to comply with legal requirements and to
19 protect others against unreasonable risks of harm;
- 20 • The existence or absence of any aggravating, mitigating, and/or special circumstances; and
- 21 • Whether the owner is capable, willing, and can reasonably be relied upon to comply with any
22 conditions and restrictions determined as necessary for the continued maintenance of the
23 animal.

24
25 As Respondents' dog "JoJo" is a declared vicious dog, LACACC would be remiss to release the
26 dog to any party that would not be regulated by either LACACC or another similar agency with similar
27 restrictions upon the maintenance of the dog. Even transferring ownership, and/or relocating the dog out
28 of the county, state, or even the country would not absolve LACACC of its responsibility to ensure the

1 health and safety of the public.

2
3 In considering the factors above, and comparing them to the testimony received during the
4 course of the hearing, there is substantial evidence to support the hearing officer's decision for
5 abatement by destruction. First, Respondents' dog "JoJo" has a history—beyond the May 16, 2013,
6 incident that led to the vicious dog that declaration—of aggression and inflicting injury. On March 1,
7 2013, the dog chased a young boy on a scooter and bit him multiple times. "JoJo" allegedly also lunged
8 at a visitor (the older sister of the second bite victim, Christian Gonzalez) in Respondents home who was
9 there with permission. Denise Wheeler, who identified herself as an owner of "JoJo," testified that, "a lot
10 of people have problems with him jumping." (Transcript of Administrative Hearing, page 38 line 12.)
11

12 The first documented bite, on March 1, 2013, resulted in multiple minor wounds to the juvenile
13 victim. The second documented bite, on May 16, 2013, resulted in severe wounds requiring multiple
14 surgeries. This progression shows a propensity for the dog to inflict severe injury in the future if given
15 the opportunity. Both victims were juveniles. Respondents' home is in a mobile home park in which
16 numerous young juveniles are present and in close proximity.
17

18 Based on the testimony of several witnesses, "JoJo" has routinely been maintained outdoors in a
19 fenced yard, secured by a 4' tall wire fence. Despite the March 4, 2013, Safe Neighborhood Program
20 Form from LACACC which describes the fence as "adequate," it is demonstrably inadequate to ensure
21 containment of the dog. ("JoJo" either jumped or reached over it to bite Gonzalez on May 16, 2013.)
22 Respondents admitted that an electronic containment system designed to deter the dog from approaching
23 the wire fence line has at times been ineffective.
24

25 Despite the knowledge, after the first bite, that "JoJo" would harm a child, Respondents chose to
26 allow the dog to be outside in the yard unattended. Respondents have owned this two-year-old dog since
27 about the time he was weaned, but have lived at the present location only since October 15, 2012. It is
28 unknown what, if any, prior or unreported incidents in which this dog was involved. However, two

1 separate bites within just over two months is an alarming rate of incident. This dog can be expected to
2 live for many more years, potentially providing many more opportunities to inflict harm.

3
4 In both documented cases in which "JoJo" has inflicted harm, the dog has been unsupervised.
5 Despite being told by the parent that "JoJo" had bitten a child (in March) and despite multiple
6 documents from animal control officers informing Respondents of the legal requirement to produce the
7 dog for quarantine, Respondents refused to produce "JoJo" for quarantine. The exhibits accompanying
8 the Petition include a copy of citation #A95027, issued to Denise Wheeler for a leash law violation
9 during the quarantine period following the second bite. This disregard for both public safety and for
10 compliance with regulations related to the possession and maintenance of the dog speak directly to
11 Respondents' willingness to comply with conditions and restrictions for the continued ownership and
12 maintenance of the dog, should they be granted.

13
14 Respondents point out that they have had "JoJo" evaluated by a trainer from K-9 Campus
15 (Delores Burton), and that the trainer "was unable to trigger any abnormal behavior" and "was unable to
16 trigger any aggression the two times I worked with him." (Typed but un-signed statements of Delores
17 Burton.) Burton stated, in her written statement, that she has "been doing dog rehabilitation for 12
18 years." The ISC investigative report attributes a statement that Burton "is a certified pet dog trainer by
19 the Animal Behavior College in Northridge, CA. She also trains and is mentored by Cesar Millan the
20 famous 'Dog Whisperer'" to Travis Bosquez. There is no mention of that certification in the transcript of
21 the hearing.

22
23 These statements and evaluation are of limited value, given the demonstrated history of
24 aggression by this dog. Even Wheeler admits that the dog tries to break through a fence. Further, Burton
25 contradicts her evaluation that the dog is not aggressive and exhibits no abnormal behaviors by stating
26 that in her 2-hour session she, "went over dog behavior, body language, leadership exercised. We
27 worked on each of the issues they asked me and *we made good progress with him.*" (Emphasis added.) If
28 "JoJo" had no aggression issues what progress needed to be made? If Burton is mentoring under Cesar

1 Millan, she is learning a dominance-based form of training. While that may be necessary in some high-
2 drive dogs with significant aggressive qualities (such as police and military service dogs) it is generally
3 felt among professional pet dog trainers to be (at best) of limited value and (at worst) having the
4 potential to incite a fear-based aggression. It is generally disfavored in light of more effective positive
5 reinforcement training methods. It is not my place to judge the style of training that is appropriate for
6 "JoJo" or any dog, but it is potentially significant that Respondents chose this style of training.

7
8 [Burton also states that she has located a rescue organization, Halfway to Home, that is willing to
9 take "JoJo" if the hearing officer will allow it. As a declared vicious dog, "JoJo" is not considered to be
10 an adoptable animal. Occasionally a rescue group will seek to obtain an administratively regulated dog,
11 such as a vicious dog, in order to "save" the dog from destruction. Almost invariably the rescue
12 organization seeks to re-home the dog. Thus, the rescue organization does what the regulating agency
13 found it unsafe to do—put the dog in a new home. When this happens, the regulating agency is at the
14 mercy of the integrity of the rescue organization to ensure that the new owner is adequately notified of
15 the history of the dog and the conditions imposed upon ownership of the dog. There is little that can be
16 done should the rescue organization violate the conditions for continued maintenance of the dog, or
17 relocate the dog to an unauthorized person or location.

18
19 [It has been my personal experience in both San Diego and Los Angeles counties that placement
20 of a declared dog with a rescue almost invariably leads to the dog being transferred to a location where it
21 cannot be regulated to ensure public safety. The only way that most rescue organizations can reasonably
22 ensure future public safety from a declared dog is to maintain it in a kennel environment, not in a home
23 environment. This is arguably more cruel for the declared dog than euthanasia would be. As such,
24 placement with a rescue organization is usually not favorable to the destruction of the dog.

25
26 Based upon the totality of the circumstances, the hearing officer's decision to abate Respondents'

27 ///

28 ///

1 dog "JoJo" by destruction is supported by substantial evidence.

2
3 IV
4 CONCLUSION

5
6 There was sufficient evidence and testimony to warrant the declaration of Respondents' dog
7 "JoJo" as a vicious dog, and I find no reasonable basis upon which to order reconsideration, or to modify
8 or rescind the determination of the hearing officer as to the dog being a "vicious dog."

9
10 As a declared "vicious dog", LACACC must ensure the health and safety of the public, no matter
11 where that public resides. LACACC has the authority to either abate the dog by destruction or by the
12 imposition of conditions and restrictions for its continued maintenance. While abatement by destruction
13 would ensure the public's health and safety, LACACC must look at what is reasonable, yet still protect
14 the public. LACACC does, when appropriate, permit the maintenance of vicious dogs within the
15 community. Inherent in that decision is the ability/willingness of the owner to abide by the conditions
16 and restrictions. However, in this case the totality of the circumstances tends to support the decision that
17 Respondents cannot be relied upon to take adequate steps to ensure public safety in the future. Transfer
18 of a dog known to have a demonstrated tendency to inflict such severe harm to a rescue group for re-
19 homing is similarly fraught with a lack of control by which LACACC could reasonably ensure future
20 public safety. As such, I find no reasonable basis upon which to order reconsideration, or to modify or
21 rescind the determination of the hearing officer to abate Respondents' dog "JoJo" by destruction.

22
23 Reviewed by:

24
25 

26 Harold W. Holmes, Deputy Director

27 August 22, 2013

DECLARATION OF SERVICE

Case No. BS 144497

STATE OF CALIFORNIA, County of Los Angeles:

I am employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action. My business address is 648 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012-2713.

That on Wednesday, August 28, 2013, I served the attached

**OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF PATRICIA
LEARNED, SHERI KOENIG, CHRIS CIRAR, MISTY HIRSCHBEIN, DVM, JENNIFER
KWAN, DVM, HAROLD W. HOLMES, ESQ.**

upon Interested Party(ies) by placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed ☒ as follows ☐ as stated on the attached mailing list:

Talitha Davies Wegner, Esq.
Davies Wegner, A Law Corporation
11661 San Vicente Boulevard, Suite 710
Los Angeles, California 90049
Email: Talitha@davieswegner.com

(BY MAIL) by sealing and placing the envelope for collection and mailing on the date and at the place shown above following our ordinary business practices. I am readily familiar with this office's practice of collection and processing correspondence for mailing. Under that practice the correspondence would be deposited with the United States Postal Service that same day with postage thereon fully prepaid.

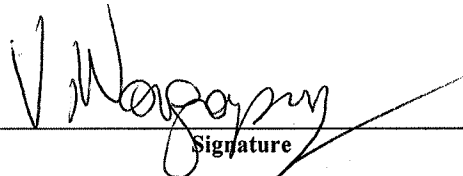
(BY ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed on the service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 28, 2013, at Los Angeles, California.

Verzhine Nagapetyan

Type or Print Name of Declarant
and, for personal service by a Messenger Service,
include the name of the Messenger Service


Signature